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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BY HAND DELIVERY

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: ET Docket No. 93-7

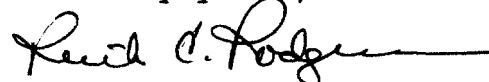
Dear Mr. Caton:

Enclosed for filing are an original and nine copies of the Opposition to Petitions for Reconsideration of the Consumer Federation of America and the Home Recording Rights Coalition in the matter noted above.

An additional copy to be date stamped and returned with the messenger for our files is also enclosed.

Thank you for your assistance.

Sincerely yours,



Ruth C. Rodgers
Executive Director
Home Recording Rights
Coalition

Enclosures

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A coalition of consumers, retailers and manufacturers of audio and video recording products

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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OFFICE OF SECRETARY

In the Matter of)	
)	
Implementation of Section 17 of the)	
Cable Television Consumer Protection)	ET Docket No. 93-7
and Competition Act of 1992)	
)	
Compatibility Between Cable Systems)	
and Consumer Electronics Equipment)	
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**OPPOSITION OF
THE CONSUMER FEDERATION OF AMERICA
AND THE HOME RECORDING RIGHTS COALITION
TO PETITIONS FOR RECONSIDERATION OF
RULES REGARDING REMOTE CONTROL INFRARED CODES**

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TO PETITIONS FOR RECONSIDERATION OF
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The Consumer Federation of America ("CFA") and the Home Recording Rights Coalition ("HRRRC") respectfully oppose the June 1994 petitions for reconsideration of the Commission's May 4, 1994 regulations regarding remote controls and infrared codes.^{1/} We support the Commission's regulations regarding remote control infrared codes as enacted.

CFA is a federation of 240 pro-consumer organizations, which have a total of approximately 50 million individual members. Since 1968, CFA has represented the consumer interest before federal and state policymaking and regulatory bodies.

^{1/} The Commission's regulations are set forth in the First Report and Order in the above-captioned proceeding, FCC 94-80 (adopted April 4, 1994; released May 4, 1994) (the "Report & Order") (official notice printed at 59 Fed. Reg. 25,339 (May 16, 1994)).

HRRC was formed in 1981 in response to litigation that threatened to prohibit consumers from buying and using VCRs. HRRC has continued to battle legislative, judicial, and regulatory challenges to consumers' use and control of audio and video recording equipment ever since.

The CFA and the HRRC share a longstanding concern for the interests and rights of consumers to enjoy the full benefits of lawfully acquired electronics products and information/entertainment media. Both organizations played an active role in promoting passage of the Cable Television Consumer Protection and Competition Act of 1992 (the "Cable Act")^{2/} -- and in commenting on the Commission's proceedings to implement the Cable Act's mandate.

INTRODUCTION

On February 16, 1994, CFA and HRRC submitted joint Reply Comments to the Federal Communications Commission's December 1, 1993 Notice of Proposed Rule Making. We have urged the Commission to adopt pro-consumer regulations to foster compatibility between cable systems and subscribers' home electronics equipment, and we support the strong action that the Commission has now taken. Indeed, the Commission adopted many of our specific suggestions, and reserved others for further consideration.

^{2/} Pub. L. No. 102-385, 106 Stat. 1460 (adding new section 624A to the Communications Act of 1934, codified at 47 U.S.C. § 544a).

Section 17(c)(2)(E) of the Cable Act requires the Commission to "prohibit a cable operator from taking any action that prevents or in any way disables the converter box supplied by the cable operator from operating compatibly with commercially available remote control units."

47 U.S.C. § 544a(c)(2)(E). In our Reply Comments, we suggested, among other things, that the Commission prohibit cable providers from changing the infrared codes they use for remote controls if the new infrared codes will interfere with the operation of previously-compatible remote controls. We noted that absent such a prohibition, cable subscribers would be reluctant to purchase remote controls from independent retailers because new cable infrared codes could disable a remote control that was cable-compatible upon purchase.

In response, the Commission adopted § 76.630(c):

Cable operators may not alter the infrared codes used to operate the remote control capabilities of the customer premises equipment they employ in providing service to subscribers. Cable operators may, however, use new equipment that includes additional infrared codes for new

remote control functions that were not included in existing models of customer premises equipment.^{3/}

Several parties have petitioned the Commission to reconsider its adoption of this regulation. These petitioners argue, in essence, that the Commission's new rules on remote control infrared codes will impede competition in the set-top box market and lessen subscriber access to advanced services.^{4/}

We oppose such petitions for reconsideration, and support the Commission's regulations regarding remote control infrared codes as enacted.

^{3/} The Commission explained that:

[The] requirement that cable operators otherwise take no action to prevent the use of subscriber-owned remote controls also includes CFA/HRRC's suggestion that we prohibit cable operators from changing the infrared codes used to operate the remote control capabilities of the set-top devices they employ. This requirement will necessitate that the remote control capabilities of any replacement customer equipment provided to subscribers employ the same infrared codes for remote control that are used with the subscriber's existing set-top equipment. This will avoid the need for subscribers to replace remote control units they own if the cable operator changes their set-top box. . . . This requirement will not prevent cable operators from using new equipment that includes additional infrared codes for new remote control functions that were not included in existing models of equipment.

Report & Order, ¶ 63.

^{4/} E.g., National Cable Television Association, Inc. Petition for Partial Reconsideration and Request for Clarification, ET Dkt. No. 93-7, at 2 (June 15, 1994) ("NCTA Petition"). See also petitions of ANTEC, CATA, Cablevision, General Instrument, Scientific Atlanta, Telecable, Time Warner, and Zenith.

A. The Commission's Remote Control Infrared Code Rule Allows System and Service Upgrades

We agree with the Commission that the basic infrared codes of operator-provided set-top boxes should be frozen, so that subscribers' existing remote control units will continue to operate basic functions compatibly if their set-top box is replaced or upgraded. We also agree that cable operators should be able to add new infrared codes for new functions that were not included in existing models of customer premises equipment. In this way, the Commission has struck a fair balance, maintaining compatibility without freezing technological developments or subscribers' access to new functions.

The argument that "old" IR codes in advanced set-top boxes will hinder cable infrastructure upgrades and deny subscribers access to advanced services is unconvincing. Under the Commission's new rules, cable companies will be able to change and upgrade their set-top boxes, so long as the basic codes remain the same. Thus, if cable companies want to upgrade their systems and offer new features and functions, they are free to do so. There is no need for them to interfere with current remote control functions (such as on/off, volume control, 0-9 channel selection) in the process. (Although old remotes may not be able to access all the new features and functions enabled by permissible new codes, at least they will operate the basic functions.)

Although some petitioners argue that it will be complex and costly for new set-top boxes to have more memory or to produce multiple versions of set-top boxes to conform to various existing IR codes, this argument is exaggerated. As noted below, if inexpensive, pre-programmed remote control units can handle several different series of IR codes, there is no reason why new set-top boxes cannot do likewise. If cable companies are allowed to change the set-top box infrared codes, relied upon by their customers, on a whim and a fancy, not only will they obsolete subscribers' remote control units; they will also interfere with subscribers' VCRs, A/V controllers, and other consumer electronic devices that transmit infrared codes to cable boxes.

B. Cable Companies Have Sufficient Flexibility to Change Set-Top Boxes and Suppliers under the New Rules

Several petitioners argue that IR codes are proprietary and not routinely shared among competitors. They add that the Commission's IR code freeze would require cable operators to stay with the manufacturer of their existing equipment, and therefore stifle competition.

In practice, most of the set-top box manufacturers (with the exception of Zenith) make little attempt to assert any right to prevent use of their IR codes. Indeed, one would think that cable operators would have significant bargaining leverage over their suppliers in this respect.

Moreover, cable operators frequently use several different suppliers, manufacturers, and models of set-top boxes.

Retail store shelves boast a variety of universal remote controls which, as cable petitioners point out, manage to use these codes. The only suit brought in this respect has been unsuccessful.

C. Cable Subscribers' Existing Remote Controls Are Not Always Readily Adaptable to New IR Codes

Some petitioners also argue that the Commission's new rules on remote control infrared codes are unnecessary, because consumers already have the flexibility to use their remote controls with a variety of set-top devices.^{5/} But while some universal remotes are easy to use by consumers, and others are very adaptable, none are both easy to use and adaptable to additional codes.

Universal remote control units are either "programmable" to work with a variety of equipment, or "pre-programmed" to operate with pre-selected equipment. In theory, programmable remote controls are adaptable by consumers to new codes and devices. But:

- a programmable universal remote control usually requires an LCD display, so tends to be much more expensive;
- programming the unit is often difficult (more complex than programming a VCR!);

^{5/} E.g., NCTA Petition, at 7.

- consumers must already have access to a functioning, compatible remote control unit in order to program this type of universal remote (will cable operators re-program customer-owned programmable remotes for free on a timely and convenient basis?);
- owners must re-program the universal remote every time they change the battery; and
- IR code transmitters built into VCRs and other devices are preprogrammed rather than programmable, as they are already challenging enough for consumers to set up and program.

Pre-programmed remote control units are easier to set up, but cannot "learn" new programs. They are more affordable, but more easily obsoleted by a new set-top box. It is a matter of luck as to whether a subscriber's device still will operate compatibly if his or her set-top box and/or its infrared codes are changed.

CONCLUSION

The Commission should expect a heavy burden of proof before granting exceptions to, or reconsidering, its rule with respect to IR codes used in operator-supplied cable converter boxes. This is an area that has been subject to the clearest and least justifiable abuse of the local cable monopoly, in which compatibility problems have been purposely created for entirely arbitrary and profit-driven reasons. Having been forced, for years, to rent remote

controls they did not need, consumers should not now be forced, arbitrarily, to give up the use of devices that they have selected and paid for. The Commission should reconsider its regulation if, and only if, some specific alternative serves consumers better and more economically.

Respectfully submitted,

CONSUMER FEDERATION OF AMERICA

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Dated: July 28, 1994